

Costs Decision

Hearing held on 15 September 2021

Site visit made on 16 September 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Costs application in relation to Appeal Ref: APP/L3625/W/20/3265412 171-175 Smallfield Road, Horley RH6 9LR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rayford Property Enterprises Ltd for a full award of costs against Reigate & Banstead Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a proposed development described as an outline planning application for the erection of 11no. dwellings with associated access. Alterations to No.175 Smallfield Road to facilitate access. All other matters to be reserved.
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Decision

1. The application for an award of costs is refused.

Procedural Matter

2. The applicant's cost claim was made in writing and the Council responded also in writing, prior to the hearing. The applicant was then given the opportunity to add orally to the claim at the hearing and did so. The Council then responded, before the applicant was permitted to provide final oral comments. I have had regard to both the written and oral submissions in my decision and refer to them below.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The claim is made on procedural grounds in relation to the failure of the Council to determine the planning application and likewise on substantive grounds that the failure to determine has prevented and delayed the development which should clearly be permitted.
5. The PPG advises that local planning authorities are at the risk of a procedural award where there has been a lack of co-operation with the other party or parties and delay in providing information or other failure to adhere to deadlines, amongst other examples. Behaviour and actions at the time of the

planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

6. The PPG also states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. The applicant has detailed, including orally at the hearing, that the Council had failed three times to determine the application. On each occasion either the target date or agreed extension date passed without explanation. It was left for the applicant to chase an explanation each time. This amounts to a lack of co-operation with the applicant, as well as a delay in providing information or other failure to adhere to deadlines.
7. At the hearing, the applicant pointed out that the claim was not intended as a personal criticism of the Officers because clearly they are not responsible for the level of resources available. Resourcing issues in relation to carrying out a statutory function does not in itself amount to unreasonable behaviour. However, this is not the same as simply keeping the applicant informed on progress on the related planning application, including with regard to the target date and the extensions. Whilst the Council were carrying out further consultation and additional work on the Planning Officer report in one instance, it did not appear this was conveyed to the applicant until after a deadline had passed. Proper explanations on a timely basis were lacking.
8. Overall, the applicant's frustration in this regard is understandable. The communication by the Council was not at its best. That the applicant submitted an appeal on the grounds of a failure to determine the application should not have been a surprise to the Council in these circumstances.
9. I am much less persuaded by the applicant's assertions on the substantive part of the claim. The Council has satisfactorily explained why it considers the proposal to be unacceptable in its putative reasons for refusal and Statement of Case. It also sets out why it considers it is contrary to the development plan and national policy. The verbal evidence given at the hearing in answering my questions further amplified the Council's case. When the totality of the evidence that it has provided is considered, it has not prevented or delayed development which should clearly be permitted, irrespective of its failure to determine the application.
10. For the reasons that I have set out above, the Council has acted unreasonably with regard to the procedural grounds of the claim. However, for a costs order to be awarded unnecessary or wasted expense also needs to have been demonstrated. The expense must relate to the appeal process.
11. There is no suggestion that the Council would have approved the planning application if it had made the decision. That is clear from the putative reasons for refusal and the Council's expressed view that the scheme had no prospect of success. Accordingly, the applicant would have in all likelihood incurred such costs because an appeal would still need to have been submitted if the proposal was to proceed. Nor do I consider this expense to be unnecessary or wasted because the Council has not prevented or delayed development which should clearly be permitted.
12. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. A full award of costs is not, therefore, justified.

13. I have also considered whether a partial award should be made, but I reach the same overall conclusion. Even with regard to where I have found unreasonable behaviour on procedural grounds, the same point arises concerning that unnecessary or wasted expense has not been demonstrated.

Darren Hendley

INSPECTOR